

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

IN RE ALLERGAN, INC. PROXY
VIOLATION DERIVATIVES
LITIGATION

Case No. 2:17-cv-04776 DOC (KESx)
The Hon. David O. Carter
CLASS ACTION
**ORDER GRANTING PLAINTIFF
TIMBER HILL LLC'S MOTION
FOR AN AWARD OF ATTORNEYS'
FEES AND EXPENSES**

1 Plaintiff Timber Hill, LLC has moved for an award of attorneys' fees, costs
2 and expenses. The deadline for objections to the application for attorneys' fees, costs
3 and expenses set by the Court was May 9, 2018. No objections to the settlement or
4 Class Counsel's request for an award of attorneys' fees, costs and expenses have been
5 made by any party or Class member. Good cause appearing therefore, the Court
6 hereby GRANTS the motion.

7 **I. ATTORNEYS' FEES**

8 In a class action, an attorneys' fee award to class counsel must be "fair,
9 reasonable, and adequate." *Staton v. Boeing Co.*, 327 F.3d 938, 963-64 (9th Cir.
10 2003). Courts usually base the fee award on a percentage of the fund recovered for
11 the class but then cross-check the reasonableness of the percentage to be awarded by
12 reviewing the resulting lodestar/multiplier. *Vizcaino v. Microsoft Corp.*, 290 F.3d
13 1043, 1047 (9th Cir. 2002). The Ninth Circuit uses a 25% benchmark in common
14 fund class actions, and "in most common fund cases, the award exceeds that
15 benchmark," with a 30% award the norm "absent extraordinary circumstances that
16 suggest reasons to lower or increase the percentage." *In re Omnivision Techs. Inc.*,
17 559 F. Supp. 2d 1036, 1047-48 (N.D. Cal. 2007) (quotation omitted).

18 After considering the evidence and all of the pertinent factors set forth in *Staton*,
19 *Vizcaino*, and other cases, the Court finds plaintiff's fee request to be fair and
20 reasonable under both the percentage method and the lodestar cross-check. The
21 requested \$8 million award is equal to 20% of the \$40 million Settlement Fund. This
22 amount is fair and reasonable.

23 The reasonableness of this fee is confirmed by the lodestar cross-check.
24 Plaintiff's counsel's combined attorneys' fee lodestar totals \$4,524,751.50. The
25 Court finds that the hours and hourly rates of plaintiff's counsel that resulted in that
26 lodestar are fair and reasonable. The \$8 million award results in a multiplier of 1.77
27 of that combined lodestar which is well within the range of reasonableness. *See*
28 *Vizcaino*, 290 F.3d at 1052-54 (approving 28% fee that resulted in a 3.65 multiplier);

1 *Milliron v. T-Mobile USA*, 423 F. App'x 131, 135 (3d Cir. 2011) (“we have approved
 2 a multiplier of 2.99 in a relatively simple case”); *In re Cadence Design Sys., Inc. Sec.*
 3 *& Derivative Litig.*, No. C-08-4966 SC, 2012 WL 1414092, at *5 (N.D. Cal. April
 4 23, 2012) (awarding counsel “more than 2.88 times its lodestar amount”); *Been v.*
 5 *O.K. Industries, Inc.*, No. CIV-02-285-RAW, 2011 WL 4478766, at *11 (E.D. Okla.
 6 2011) (citing a study “reporting average multiplier of 3.89 in survey of 1,120 class
 7 action cases” and finding that a multiplier of 2.43% would be “per se reasonable”).
 8 Accordingly, Class Counsel’s request for an \$8 million fee award, calculated as 20%
 9 of the Settlement Fund, is GRANTED.

10 **II. EXPENSES**

11 Class Counsel are entitled to recover their “out-of-pocket expenses that would
 12 normally be charged to a fee paying client.” *Harris v. Marhoefer*, 24 F.3d 16, 19
 13 (9th Cir. 1994). Class Counsel have submitted adequate support for the \$756,983.55
 14 in costs and expenses they incurred for which reimbursement is sought. No party has
 15 objected to reimbursement of any of these costs and expenses. The court finds that
 16 the costs and expenses were reasonably incurred and they are approved as fair and
 17 reasonable. Therefore, the motion for reimbursement is GRANTED.

18 **III. CONCLUSION**

19 In view of the foregoing, the Escrow Agent is AUTHORIZED and
 20 DIRECTED to pay forthwith the following amounts from the Settlement Fund:

- 21 A. \$8 million for attorneys’ fees to Class Counsel;
- 22 B. \$756,983.55 in costs and expenses to Class Counsel;
- 23 C. The fees and expense award shall include interest thereon at the
 24 same rate as earned by the Settlement Fund.

25 These amounts shall be paid to a bank account designated by Susman Godfrey
 26 L.L.P. and Entwistle & Cappucci LLP. Susman Godfrey L.L.P. shall be responsible
 27 for the distribution of all funds to the appropriate parties.
 28

1 The Court shall retain continuing jurisdiction over the Settlement Fund and the
2 foregoing parties and counsel for purposes of supervising such distributions.

3 IT IS SO ORDERED.

4 Dated: August 13, 2018

5 

6

David O. Carter
7 UNITED STATES DISTRICT JUDGE
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28